

REMARKS

A Petition for a Three-Month Extension of Time thereby extending the time for responding to the Office Action from August 21, 2007 to and including November 21, 2007 is submitted herewith.

The present Amendment is in response to the Office Action mailed May 21, 2007. Claims 1-20 were rejected in the Action. Claim 21 is added. Therefore, claims 1-21 are currently pending in the present application. Support for new claim 21 can be found in Applicants' originally filed specification in at least paragraph [00105]. As such, no new matter has been added. Applicants set forth remarks relating to the Office Action below.

In the present Action, the Examiner noted that an application in which the benefits of an earlier application are desired must contain a specific reference to the prior application in the first sentence of the specification pursuant to 37 C.F.R. 1.78(a)(2) and (a)(5). Applicants have amended paragraph [0001] of the originally filed disclosure to properly claim priority.

Further in the Action, the Examiner rejected claims 1, 2, 4, 5, and 9-20 under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,478,800 to Fraser et al. ("*Fraser*") in view of U.S. Pat. No. 5,314,477 to Marnay ("*Marnay*"). The Examiner asserted that Fig. 1 of *Fraser* shows a tool for implanting a disc in an intervertebral space comprising a shaft 20, two distal extensions 12A, 14A and a pin 20A located between the extensions. Further, the Examiner asserted that Fig. 1 shows a "trial" 24 having two halves located between and engaged with the extensions. The Examiner contended that while *Fraser* fails to teach that the trial halves are separate such that the separation of the extensions move the trial halves, *Marnay* teaches an insertion tool for separating or applying force to a spinal prosthesis having two halves that can pivot.

Applicants respectfully assert that one skilled in the art would not combine the teachings of *Marnay* with that of *Fraser* as asserted by the Examiner to arrive at the present invention. The insertion tool that the Examiner is referring to in *Marnay* is not used to vary the separation between trial halves as recited in independent claim 1. The insertion tool in *Marnay*, which the Examiner refers to as pliers 80, is merely a positioning tool used to align plates 110, 120 of *prosthesis 100* during insertion of plates 110, 120 into a previously distracted intervertebral space. There is no reason to vary the separation between plates 110, 120 during such use.

Further, *Marnay* teaches away from pliers 80 being used to vary the separation between trial halves. In fact, *Marnay* discloses that vertebrae 400, 410 may be separated or distracted using a *regular separator* (not shown) to permit insertion of the prosthesis. See col.6, 11.39-61, and col.7, 11.16-18. Therefore, pliers 80 is not used for distraction of vertebrae 400, 410 or for "varying the separation between the extensions," which "varies a separation between the trial halves" as recited in independent claim 1.

For the foregoing reasons, independent claim 1 is not obvious over *Fraser* in view of *Marnay* and is allowable. Claims 2, 4, 5, and 9-20 are not obvious, *inter alia*, by virtue of their dependence from claim 1, which is not obvious for the reasons set forth above.

The Examiner also rejected claim 3 under 35 U.S.C. 103(a) as being unpatentable over *Fraser* in view of *Marnay* and further in view of U.S. Pat. No. 5,370,697 to Baumgartner ("*Baumgartner*") and claims 6-8 under 35 U.S.C. 103(a) as being unpatentable over *Fraser* in view of *Marnay* and further in view of U.S. Pat. No. 4,566,466 to Ripple *et al.* ("*Ripple*"). In response, Applicants assert that claims 3, and 6-8 are patentable, *inter alia*, by virtue of their dependence from claim 1, which is patentable for the reasons set forth above.

Applicants respectfully assert that new independent claim 21 is patentable over *Fraser* alone or in combination with *Marnay* because the cited references do not disclose, teach, or suggest "a bifurcated trial having a first trial half of the bifurcated trial pivotably coupled to a first of the extensions and having a second trial half of the bifurcated trial fixed to a second of the extensions." As clearly shown in Fig. 3c, upper half 306a of bifurcated trial 304 is pivotably coupled to upper distal extension 312a by pivot pin 315, while lower half 306b is fixed to lower distal extension 312b. This allows the upper half 306a to be angled with respect to lower half 306b.

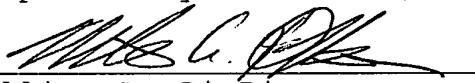
As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicants' attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: November 21, 2007

Respectfully submitted,

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